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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0800**

State of Minnesota,
Respondent,

vs.

Ebony Mary Lane,
Appellant.

**Filed March 4, 2019
Affirmed
Rodenberg, Judge**

Clay County District Court
File No. 14-CR-17-4385

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Alexander J. Stock, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Reilly, Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

In this direct appeal from judgment of conviction, appellant Ebony Mary Lane challenges her sentence for first-degree test refusal, arguing that the district court erred

when it rejected a plea agreement that included a bottom-of-the-box guidelines sentence. We affirm.

FACTS

Clay County Sergeant Schroeder arrested appellant for first-degree driving while impaired (DWI) after Sergeant Schroeder received reports that appellant's car was "swerving and had almost hit several vehicles head on" and was "speeding and all over the road." Field sobriety testing indicated that appellant was impaired. Sergeant Schroeder transported appellant to the Clay County Jail and read her an implied-consent advisory. Appellant refused to take a breath test. The state charged appellant with first-degree DWI under Minn. Stat. § 169A.20, subd. 1(1) (2016), and felony refusal to submit to a chemical test under Minn. Stat. § 169A.20, subd. 2(1) (2016).

Appellant reached a plea agreement with the state. She agreed to plead guilty to the test-refusal offense in exchange for the state's dismissal of the DWI offense and the state's agreement to request a bottom-of-the-box sentence for the test-refusal offense. A preplea sentencing worksheet indicated that appellant had a criminal history score of six. With that criminal history score, the maximum penalty the court could impose without departing from the Minnesota Sentencing Guidelines is an 84-month prison term. The bottom-of-the-box sentence would be 62 months.

Appellant pleaded guilty. At the conclusion of the plea hearing, the district court explained that it would reserve acceptance of the guilty plea until sentencing. Between the plea hearing and sentencing, a presentence investigation (PSI) was completed. After the PSI was completed, appellant's trial counsel moved to correct appellant's criminal history

score, arguing that the PSI was incorrect, and appellant's criminal history score should be four, not six.

At sentencing, appellant's trial counsel explained the miscalculation and asked the district court to follow the earlier bottom-of-the-box agreement which, because of the lowered criminal history score, would result in a 51-month prison term. The district court rejected the previously deferred plea agreement. It informed appellant that, if she chose to maintain her plea of guilty and proceed to sentencing, the district court's intention was to impose a top-of-the-box prison term—72 months based on a criminal history score of four. The district court explained that it would allow appellant to either withdraw her guilty plea or proceed with sentencing. Appellant conferred with her attorney and then informed the district court that she wanted to maintain her plea of guilty and proceed with sentencing for the felony test-refusal offense. The district court sentenced appellant to 72 months in prison, with 84-days credit for time served and a five-year conditional release period.

This appeal followed.

D E C I S I O N

Appellant argues that the district court abused its sentencing discretion by rejecting the plea agreement and instead sentencing her to a top-of-the box prison sentence.¹

¹ The parties and the district court made several references to an “agreement” during appellant's guilty-plea and sentencing hearings. The record confirms that the negotiation between appellant and the state amounted to an agreement and not a recommendation. See *State v. Tyska*, 448 N.W.2d 546, 549 (Minn. App. 1989) (concluding that the record reflected that a plea agreement had been entered into because the parties and the district court referred to it as an agreement rather than a recommendation).

When a district court rejects a plea agreement, we review that decision for abuse of discretion. *State v. Pero*, 590 N.W.2d 319, 325 (Minn. 1999). Although the state has the authority to enter into plea agreements and to decide who should be prosecuted and for what charge, a district court is not bound by a plea agreement concerning any sentence to be imposed. *Johnson v. State*, 641 N.W.2d 912, 917-18 (Minn. 2002). Accordingly, a defendant has no right to have a plea agreement accepted; whether to accept a guilty plea is within the discretion of the district court. *State v. Klug*, 839 N.W.2d 723, 726 (Minn. App. 2013). The final disposition of a criminal case is for the judiciary. *Johnson*, 641 N.W.2d at 917.

“When a plea is entered and the defendant questioned, the trial court judge must reject or accept the plea of guilty on the terms of the plea agreement.” Minn. R. Crim. P. 15.04, subd. 3(1). The district court may postpone its acceptance or rejection until it has received the results of a presentence investigation (PSI). *Id.* “If the court rejects the plea agreement, it must advise the parties in open court and then call upon the defendant to either affirm or withdraw the plea.” *Id.*; *see also Tyska*, 448 N.W.2d at 549 (further explaining Minn. R. Crim. P. 15.04, subd. 3(1)).

Appellant argues that the district court’s rejection of her plea was arbitrary, and that she is entitled to receive the agreed-upon bottom-of-the-box sentence. But because the district court expressly withheld acceptance or rejection of this plea until sentencing, and provided appellant with the opportunity to withdraw or affirm her guilty plea after it declined to accept the agreement, the district court acted within its discretion.

The district court's rejection of the plea agreement was not arbitrary. Appellant's criminal history score at sentencing was different than the plea agreement had contemplated. The district court determined that the bottom-of-the-box sentence based on the lower criminal history score was not an appropriate sentence, given the PSI, appellant's criminal history, and her driving conduct. Accordingly, the district court rejected the agreement. Carefully following the procedures set forth in caselaw and the Minnesota Rules of Criminal Procedure, the district court told appellant that she could either withdraw her guilty plea or proceed to sentencing by maintaining her guilty plea despite the rejection of the plea agreement. *See Melde v. State*, 778 N.W.2d 376, 379 (Minn. App. 2010) (stating that if a district court rejects a plea agreement, a defendant is entitled to withdraw her plea if one has been entered and must again decide whether to plead guilty). After consulting with her lawyer, appellant decided that she wanted to maintain her plea of guilty and be sentenced that day.

The record establishes that when appellant initially pleaded guilty, she was aware that the district court could reject the plea agreement at sentencing. Appellant's signed plea petition provided that, if the district court did not approve of the agreement, appellant had "an absolute right to withdraw [her] plea of guilty and have a trial" and provided that appellant's testimony at the plea hearing could not be used against her at trial. The petition also provided that, if appellant withdrew her plea, she would then "stand trial on the original charge(s)" and the "prosecution could proceed against [her] just as if there had been no plea of guilty and no plea agreement."

Despite appellant's assertion that the district court should have sentenced her according to her agreement with the state, the district court was not bound by that agreement. The district court's decision to wait to accept appellant's guilty plea until sentencing was entirely proper. *See State v. Kunshier*, 410 N.W.2d 377, 379 (Minn. App. 1987) (stating that a district court judge may elect not to accept a plea until further information is available, such as information provided by a presentence investigation), *review denied* (Minn. Oct. 21, 1987).

For this same reason, appellant's argument that she is entitled to specific performance of the plea agreement is misplaced. *Cf. State v. Meredyk*, 754 N.W.2d 596, 603 (Minn. App. 2008) (stating that plea agreements represent a bargained-for understanding between the government and a defendant). The district court acted within its discretion in rejecting the plea agreement. When, in light of that, appellant chose to maintain her plea of guilty and be sentenced, there was no plea agreement to follow.

Appellant also argues that she is entitled to a lesser prison term because her sentence ended up being longer than originally contemplated. But appellant's signed plea petition provided that her sentence would not exceed 84 months and would not be less than 36 months. The 72-month sentence imposed by the district court was within the presumptive sentencing range provided by the Minnesota Sentencing Guidelines. Minn. Sent. Guidelines 4.A (2016). It is well-established that we afford a district court great discretion in the imposition of sentences, and generally we will not modify a sentence within the presumptive guidelines range absent compelling circumstances. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). While the sentence

imposed was not a bottom-of-the-box term, it was within the presumptive range under the guidelines.

The district court's careful and thoughtful handling of the rejected plea agreement—within its proper province for determination—was exemplary. Eyes open, fully informed, and represented by counsel, appellant chose to maintain her plea of guilty, despite the district court's disapproval of the plea agreement presented to it earlier.²

Affirmed.

² The state makes additional arguments concerning whether the district court impermissibly interjected itself into plea negotiations by sentencing appellant to a term not proposed by the parties. These arguments were not raised by the appellant and are unnecessary to our resolution of this appeal. We therefore do not address them further.